

**PETROLEUM STORAGE TANKS AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill addresses regulation of aboveground petroleum storage tanks.

**Highlighted Provisions:**

This bill:

- defines terms;
- requires owners or operators of certain aboveground petroleum storage tanks to notify the director of the Division of Environmental Response and Remediation and establish financial assurance;
- provides for rulemaking;
- addresses state owned or leased tanks;
- imposes restrictions on delivery of petroleum;
- addresses civil penalties; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

- 19-6-105**, as last amended by Laws of Utah 2020, Chapter 256
- 19-6-402**, as last amended by Laws of Utah 2018, Chapter 281
- 19-6-403**, as last amended by Laws of Utah 2012, Chapters 310 and 360
- 19-6-407**, as last amended by Laws of Utah 2012, Chapter 360
- 19-6-415**, as last amended by Laws of Utah 1997, Chapter 172
- 19-6-415.5**, as enacted by Laws of Utah 1997, Chapter 172
- 19-6-416**, as last amended by Laws of Utah 2012, Chapter 360
- 19-6-420**, as last amended by Laws of Utah 2014, Chapter 227

33           **19-8-119**, as last amended by Laws of Utah 2014, Chapter 227

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35           *Be it enacted by the Legislature of the state of Utah:*

36           Section 1. Section **19-6-105** is amended to read:

37           **19-6-105. Rules of board.**

38           (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah  
39           Administrative Rulemaking Act:

40           (a) establishing minimum standards for protection of human health and the  
41           environment, for the storage, collection, transport, transfer, recovery, treatment, and disposal of  
42           solid waste, including requirements for the approval by the director of plans for the  
43           construction, extension, operation, and closure of solid waste disposal sites;

44           (b) identifying wastes that are determined to be hazardous, including wastes designated  
45           as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of 1976, 42  
46           U.S.C., Sec. 6921, et seq.;

47           (c) governing generators and transporters of hazardous wastes and owners and  
48           operators of hazardous waste treatment, storage, and disposal facilities, including requirements  
49           for keeping records, monitoring, submitting reports, and using a manifest, without treating  
50           high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling  
51           muds, and oil production brines in a manner more stringent than they are treated under federal  
52           standards;

53           (d) requiring an owner or operator of a treatment, storage, or disposal facility that is  
54           subject to a plan approval under Section 19-6-108 or that received waste after July 26, 1982, to  
55           take appropriate corrective action or other response measures for releases of hazardous waste  
56           or hazardous waste constituents from the facility, including releases beyond the boundaries of  
57           the facility;

58           (e) specifying the terms and conditions under which the director shall approve,  
59           disapprove, revoke, or review hazardous wastes operation plans;

60           (f) governing public hearings and participation under this part;

61           (g) establishing standards governing underground storage tanks and aboveground  
62           petroleum storage tanks, in accordance with Title 19, Chapter 6, Part 4, Underground Storage  
63           Tank Act;

(h) relating to the collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities in accordance with the requirements of Section 19-6-106;

(i) defining closure plans, modification requests, or both for hazardous waste, as class I, class I with prior director approval, class II, or class III;

and

(j) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind to be thrown, or remain upon or in a street, road, ditch, canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or well.

(2) If any of the following are determined to be hazardous waste and are therefore subjected to the provisions of this part, the board shall, in the case of landfills or surface impoundments that receive the solid wastes, take into account the special characteristics of the wastes, the practical difficulties associated with applying requirements for other wastes to the wastes, and site-specific characteristics, including the climate, geology, hydrology, and soil chemistry at the site, if the modified requirements assure protection of human health and the environment and are no more stringent than federal standards applicable to waste:

(a) solid waste from the extraction, beneficiation, or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium;

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; and

(c) cement kiln dust waste.

(3) The board shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. Those criteria shall apply to any facility or incinerator for which plan approval is required under Section 19-6-108.

Section 2. Section **19-6-402** is amended to read:

**19-6-402. Definitions.**

As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:

(a) a release from an underground storage tank or petroleum storage tank; or

(b) the damage caused by that release.

(2) "Aboveground petroleum storage tank" means a storage tank that:

(a) is by volume at least 90% above ground, including the pipes connected to the storage tank;

(b) contains regulated substances;

(c) has the capacity to hold 351 gallons or more; and

(d) is not:

(i) used in agricultural operations, as defined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) used for heating oil for consumptive use on the premises where stored;

(iii) part of a petroleum refinery; or

(iv) directly related to oil or gas production and gathering operations.

~~[(2)]~~ (3) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.

~~[(3)]~~ (4) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a person.

~~[(4)]~~ (5) "Certificate of compliance" means a certificate issued to a facility by the director:

(a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and

(b) listing ~~all~~ the tanks at the facility, specifying:

(i) which tanks may receive petroleum; and

(ii) which tanks have not met the requirements for compliance.

~~[(5)]~~ (6) "Certificate of registration" means a certificate issued to a facility by the director demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:

(a) registered the tanks; and

(b) paid the annual underground storage tank fee.

~~[(6)]~~ (7) (a) "Certified underground storage tank consultant" means a person who:

(i) for a fee, or in connection with services for which a fee is charged, provides or contracts to provide information, opinions, or advice relating to underground storage tank

126 release:

127 (A) management;

128 (B) abatement;

129 (C) investigation;

130 (D) corrective action; or

131 (E) evaluation;

132 (ii) has submitted an application to the director;

133 (iii) received a written statement of certification from the director; and

134 (iv) meets the education and experience standards established by the board under

135 Subsection 19-6-403(1)(a)(vii).

136 (b) "Certified underground storage tank consultant" does not include:

137 (i) (A) an employee of the owner or operator of the underground storage tank; or

138 (B) an employee of a business operation that has a business relationship with the owner

139 or operator of the underground storage tank, and markets petroleum products or manages

140 underground storage tanks; or

141 (ii) a person licensed to practice law in this state who offers only legal advice on

142 underground storage tank release:

143 (A) management;

144 (B) abatement;

145 (C) investigation;

146 (D) corrective action; or

147 (E) evaluation.

148 [~~(7)~~] (8) "Closed" means an underground storage tank or aboveground petroleum

149 storage tank that is no longer in use that has been:

150 (a) emptied and cleaned to remove [~~all~~] the liquids and accumulated sludges; and

151 (b) (i) removed from the ground with all underground components; or

152 (ii) filled with an inert solid material.

153 [~~(8)~~] (9) "Corrective action plan" means a plan for correcting a release from a

154 petroleum storage tank that includes provisions for any of the following:

155 (a) cleanup or removal of the release;

156 (b) containment or isolation of the release;

- 157 (c) treatment of the release;
- 158 (d) correction of the cause of the release;
- 159 (e) monitoring and maintenance of the site of the release;
- 160 (f) provision of alternative water supplies to a person whose drinking water has
- 161 become contaminated by the release; or
- 162 (g) temporary or permanent relocation, whichever is determined by the director to be
- 163 more cost-effective, of a person whose dwelling has been determined by the director to be no
- 164 longer habitable due to the release.
- 165 ~~[(9)]~~ (10) "Costs" means money expended for:
- 166 (a) investigation;
- 167 (b) abatement action;
- 168 (c) corrective action;
- 169 (d) judgments, awards, and settlements for bodily injury or property damage to third
- 170 parties;
- 171 (e) legal and claims adjusting costs incurred by the state in connection with judgments,
- 172 awards, or settlements for bodily injury or property damage to third parties; or
- 173 (f) costs incurred by the state risk manager in determining the actuarial soundness of
- 174 the fund.
- 175 ~~[(10)]~~ (11) "Covered by the fund" means the requirements of Section 19-6-424 have
- 176 been met.
- 177 ~~[(11)]~~ (12) "Director" means the director of the Division of Environmental Response
- 178 and Remediation.
- 179 ~~[(12)]~~ (13) "Division" means the Division of Environmental Response and
- 180 Remediation, created in Subsection 19-1-105(1)(c).
- 181 ~~[(13)]~~ (14) "Dwelling" means a building that is usually occupied by a person lodging
- 182 there at night.
- 183 ~~[(14)]~~ (15) "Enforcement proceedings" means a civil action or the procedures to
- 184 enforce orders established by Section 19-6-425.
- 185 ~~[(15)]~~ (16) "Facility" means ~~the~~ the underground storage tanks located on a single
- 186 parcel of property or on any property adjacent or contiguous to that parcel.
- 187 ~~[(16)]~~ (17) "Fund" means the Petroleum Storage Tank Trust Fund created in Section

188 19-6-409.

189 ~~[(17)]~~ (18) "Operator" means a person in control of or who is responsible on a daily  
190 basis for the maintenance of an underground storage tank or aboveground petroleum storage  
191 tank that is in use for the storage, use, or dispensing of a regulated substance.

192 ~~[(18)]~~ (19) "Owner" means:

193 (a) in the case of an underground storage tank in use on or after November 8, 1984, a  
194 person who owns an underground storage tank used for the storage, use, or dispensing of a  
195 regulated substance; ~~[and]~~

196 (b) in the case of an underground storage tank in use before November 8, 1984, but not  
197 in use on or after November 8, 1984, a person who owned the tank immediately before the  
198 discontinuance of its use for the storage, use, or dispensing of a regulated substance~~[-]; and~~

199 (c) in the case of an aboveground petroleum storage tank, a person who owns the  
200 aboveground petroleum storage tank.

201 ~~[(19)]~~ (20) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:

202 (a) 60 degrees Fahrenheit; and

203 (b) a pressure of 14.7 pounds per square inch absolute.

204 ~~[(20)]~~ (21) "Petroleum storage tank" means a tank that:

205 (a) (i) is underground;

206 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42  
207 U.S.C. Sec. 6991c, et seq.; and

208 (iii) contains petroleum; or

209 (b) the owner or operator voluntarily submits for participation in the Petroleum Storage  
210 Tank Trust Fund under Section 19-6-415.

211 ~~[(21)]~~ (22) "Petroleum Storage Tank Restricted Account" means the account created in  
212 Section 19-6-405.5.

213 ~~[(22)]~~ (23) "Program" means the Environmental Assurance Program under Section  
214 19-6-410.5.

215 ~~[(23)]~~ (24) "Property damage" means physical injury to, destruction of, or loss of use of  
216 tangible property.

217 ~~[(24)]~~ (25) (a) "Regulated substance" means petroleum and petroleum-based  
218 substances comprised of a complex blend of hydrocarbons derived from crude oil through

219 processes of separation, conversion, upgrading, and finishing.

220 (b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual  
221 fuel oils, lubricants, petroleum solvents, and used oils.

222 ~~[(25)]~~ (26) (a) "Release" means spilling, leaking, emitting, discharging, escaping,  
223 leaching, or disposing a regulated substance from an underground storage tank or petroleum  
224 storage tank.

225 (b) A release of a regulated substance from an underground storage tank or petroleum  
226 storage tank is considered a single release from that tank system.

227 ~~[(26)]~~ (27) (a) "Responsible party" means a person who:

228 (i) is the owner or operator of a facility;

229 (ii) owns or has legal or equitable title in a facility or an underground storage tank;

230 (iii) owned or had legal or equitable title in a facility at the time petroleum was  
231 received or contained at the facility;

232 (iv) operated or otherwise controlled activities at a facility at the time petroleum was  
233 received or contained at the facility; or

234 (v) is an underground storage tank installation company.

235 (b) "Responsible party" is as defined in Subsections ~~[(26)]~~ (27)(a)(i), (ii), and (iii) does  
236 not include:

237 (i) a person who is not an operator and, without participating in the management of a  
238 facility and otherwise not engaged in petroleum production, refining, and marketing, holds  
239 indicia of ownership:

240 (A) primarily to protect the person's security interest in the facility; or

241 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an  
242 employee benefit plan; or

243 (ii) governmental ownership or control of property by involuntary transfers as provided  
244 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

245 (c) The exemption created by Subsection ~~[(26)]~~ (27)(b)(i)(B) does not apply to actions  
246 taken by the state or its officials or agencies under this part.

247 (d) The terms and activities "indicia of ownership," "primarily to protect a security  
248 interest," "participation in management," and "security interest" under this part are in  
249 accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).



(e) The terms "participate in management" and "indicia of ownership" as defined in 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the fiduciaries listed in Subsection ~~[(26)]~~ (27)(b)(i)(B).

(28) "Rests directly on the ground" means that at least some portion of an aboveground petroleum storage tank is in contact with soil.

~~[(27)]~~ (29) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

~~[(28)]~~ (30) "State cleanup appropriation" means money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.

(31) "Underground piping" means piping that is buried underground and connected to an aboveground petroleum storage tank.

~~[(29)]~~ (32) "Underground storage tank" means a tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

- (a) a petroleum storage tank;
- (b) underground pipes and lines connected to a storage tank;
- (c) underground ancillary equipment;
- (d) a containment system; and
- (e) each compartment of a multi-compartment storage tank.

~~[(30)]~~ (33) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization that installs underground storage tanks.

~~[(31)]~~ (34) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the director.

~~[(32)]~~ (35) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

Section 3. Section **19-6-403** is amended to read:

**19-6-403. Powers and duties of board.**

The board shall regulate an underground storage tank or petroleum storage tank by:

- (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

281 making rules that:

282 (a) provide for the:

283 (i) certification of an underground storage tank installer, inspector, tester, or remover;

284 (ii) registration of an underground storage tank operator;

285 (iii) registration of an underground storage tank;

286 (iv) administration of the petroleum storage tank program;

287 (v) format of, and required information in, a record kept by an underground storage or

288 petroleum storage tank owner or operator who is participating in the fund;

289 (vi) voluntary participation in the fund for:

290 (A) an [~~above ground~~] aboveground petroleum storage tank[~~;~~and] as provided in

291 Section 19-6-415; or

292 (B) a tank:

293 (I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

294 (II) specified in Section 19-6-415; [~~and~~]

295 (vii) certification of an underground storage tank consultant including:

296 (A) a minimum education or experience requirement; and

297 (B) a recognition of the educational requirement of a professional engineer licensed

298 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing

299 Act, as meeting the education requirement for certification; and

300 (viii) compliance with this chapter by an aboveground petroleum storage tank that has

301 underground piping or rests directly on the ground;

302 (b) adopt the requirements for an underground storage tank contained in:

303 (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may

304 be amended in the future; and

305 (ii) an applicable federal requirement authorized by the federal law referenced in

306 Subsection (1)(b)(i); and

307 (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42

308 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of

309 primacy in the regulation of an underground storage tank; and

310 (2) applying the provisions of this part.

311 Section 4. Section **19-6-407** is amended to read:

**19-6-407. Underground storage tank registration -- Change of ownership or operation -- Aboveground petroleum storage tank -- Civil penalty.**

(1) (a) ~~[Each]~~ An owner or operator of an underground storage tank shall register the tank with the director if the tank:

(i) is in use; or

(ii) was closed after January 1, 1974.

(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the ~~[executive secretary]~~ director of the change within 30 days after the change occurs.

(c) Each installer of an underground storage tank shall notify the director of the completed installation within 60 days following the installation of an underground storage tank.

(2) (a) The owner or operator of an aboveground petroleum storage tank shall notify the director of the location of the aboveground petroleum storage tank:

(i) if the aboveground petroleum storage tank:

(A) has underground piping; or

(B) rests directly on the ground; and

(ii) by no later than:

(A) June 30, 2022, if the aboveground petroleum storage tank is installed on or before June 30, 2022;

(B) if the aboveground petroleum storage tank is installed on or after July 1, 2022, 30 days after the day on which the aboveground petroleum storage tank is installed; or

(C) 30 days before the aboveground petroleum storage tank is closed.

(b) When notifying the director under this Subsection (2), an owner of an aboveground petroleum storage tank described in this Subsection (2) shall pay a processing fee established under Section 63J-1-504.

(c) Before operating an aboveground petroleum storage tank on or after June 30, 2023, that has underground piping or rests directly on the ground, the owner or operator of the aboveground petroleum storage tank shall provide financial responsibility by participating in the Environmental Assurance Program or demonstrating coverage through another method approved by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) (i) The director shall certify when an owner or operator of an aboveground petroleum storage tank is in compliance with this Subsection (2).

(ii) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of an aboveground petroleum storage tank under Subsection (2)(a) that is not certified by the director as in compliance with this Subsection (2).

~~[(2)]~~ (3) The director may issue a notice of agency action assessing a civil penalty in the amount of \$1,000 if an owner, operator, or installer:

(a) of a petroleum or underground storage tank fails to register the tank or provide notice as required in Subsection (1)~~[-]; or~~

(b) of an aboveground petroleum storage tank described in Subsection (2) fails to provide notice and financial responsibility as required in Subsection (2).

~~[(3)]~~ (4) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

Section 5. Section **19-6-415** is amended to read:

**19-6-415. Participation of aboveground petroleum storage tanks and exempt and aboveground tanks.**

(1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280, Subpart A, may become eligible for payments from the Petroleum Storage Tank Trust Fund if ~~[it]~~ the underground storage tank:

(a) (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;

(ii) is used for storing heating oil for consumptive use on the premises where stored; or

(iii) is used for any oxygenate blending component for motor fuels;

(b) complies with the requirements of Section 19-6-412;

(c) meets other requirements established by rules made under Section 19-6-403; and

(d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.

(2) An ~~[above-ground]~~ aboveground petroleum storage tank, including an aboveground petroleum storage tank excluded from the definition of aboveground petroleum storage tank under Subsection 19-6-402(2)(d), may become eligible for payments from the Petroleum Storage Tank Trust Fund if the owner or operator:

(a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;

(b) complies with the requirements of Section 19-6-412; and

(c) meets other requirements established by rules made under Section 19-6-403.

Section 6. Section **19-6-415.5** is amended to read:

**19-6-415.5. State owned or leased tanks to participate in program.**

Any underground storage tank or aboveground petroleum storage tank that has underground piping or rests directly on the ground owned or leased by the state [~~of Utah~~] and subject to the financial assurance requirements established by division rule shall participate in the program.

Section 7. Section **19-6-416** is amended to read:

**19-6-416. Restrictions on delivery of petroleum -- Civil penalty.**

(1) (a) [~~After July 1, 1991, a~~] A person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(7).

(b) Beginning July 1, 2023, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in an aboveground petroleum storage tank that has underground piping or rests directly on the ground and that is not in compliance with Subsection 19-6-407(2).

(2) [~~Any~~] A person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank or aboveground petroleum storage tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each occurrence.

(3) The director shall issue a notice of agency action assessing a civil penalty of not more than \$500 against any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank [~~or~~], underground storage tank, or aboveground petroleum storage tank.

(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank [~~or~~], underground storage tank, or aboveground petroleum storage tank that is identified in compliance with Subsection

19-6-411(7) or 19-6-407(2) and rules made under ~~[that]~~ the relevant subsection, whether or not the tank is in actual compliance with the other requirements of Section 19-6-411 or 19-6-407.

Section 8. Section **19-6-420** is amended to read:

**19-6-420. Releases -- Abatement actions -- Corrective actions.**

(1) If the director determines that a release from a petroleum storage tank has occurred, the director shall:

- (a) identify and name as many of the responsible parties as reasonably possible; and
- (b) determine which responsible parties, if any, are covered by the fund regarding the release in question.

(2) Regardless of whether the petroleum storage tank generating the release is covered by the fund:

(a) the director may order the owner or operator to take abatement, or investigative or corrective action, including the submission of a corrective action plan; and

(b) if the owner or operator fails to comply with the action ordered by the director under Subsection (2)(a), the director may take one or more of the following actions:

(i) subject to the conditions in this part, use money from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;

(ii) commence an enforcement proceeding;

(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5;

(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5; or

(v) where the owner or operator is the responsible party, revoke the responsible party's certificate of compliance, as described in Section 19-6-414.

(3) (a) Subject to the limitations established in Section 19-6-419, the director shall provide money from the fund for abatement action for a release generated by a tank covered by the fund if:

(i) the owner or operator takes the abatement action ordered by the director; and

(ii) the director approves the abatement action.

(b) If a release presents the possibility of imminent and substantial danger to the public

health or the environment, the owner or operator may take immediate abatement action and petition the director for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the director that the abatement action was reasonable and timely in light of circumstances, the director shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.

(c) The owner or operator shall notify the director within 24 hours of the abatement action taken.

(4) (a) If the director determines corrective action is necessary, the director shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the director shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the director shall consider the following:

(i) the threat to public health;

(ii) the threat to the environment; and

(iii) the cost-effectiveness of alternative corrective actions.

(5) If the director approves the corrective action plan or develops the director's own corrective action plan, the director shall:

(a) approve the estimated cost of implementing the corrective action plan;

(b) order the owner or operator to implement the corrective action plan;

(c) (i) if the release is covered by the fund, determine the amount of fund money to be allocated to an owner or operator to implement a corrective action plan; and

(ii) subject to the limitations established in Section 19-6-419, provide money from the fund to the owner or operator to implement the corrective action plan.

(6) (a) The director may not distribute any money from the fund for corrective action until the owner or operator obtains the director's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the director and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

(i) the owner or operator submits the corrective action plan to the director within seven days after beginning corrective action; and

(ii) the director approves the corrective action plan.

(7) If the director disapproves the plan, the director shall solicit a new corrective action plan from the owner or operator.

(8) If the director disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the director may:

(a) develop an alternative corrective action plan; and

(b) act as authorized under Subsections (2) and (5).

(9) (a) When notified that the corrective action plan has been implemented, the director shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.

(b) If the director determines the corrective action has not been properly performed or completed, the director may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.

(10) (a) For releases not covered by the fund, the director may recover from the responsible party expenses incurred by the division for managing and overseeing the abatement, and investigation or corrective action of the release. These expenses shall be:

(i) billed quarterly per release;

(ii) due within 30 days of billing;

(iii) deposited with the division as dedicated credits;

(iv) used by the division for the administration of the underground storage tank program outlined in this part; and

(v) billed per hourly rates as established under Section 63J-1-504.

(b) If the responsible party fails to pay expenses under Subsection 10(a), the director may:

(i) revoke the responsible party's certificate of compliance, as described in Section 19-6-414, if the responsible party is also the owner or operator; and

(ii) pursue an action to collect expenses in Subsection 10(a), including the costs of collection.

(11) For purposes of this section, "petroleum storage tank" includes an aboveground petroleum storage tank if the aboveground petroleum storage tank:

(a) has underground piping; or



498 (b) rests directly on the ground.

499 Section 9. Section **19-8-119** is amended to read:

500 **19-8-119. Apportionment or contribution.**

501 (1) Any party who incurs costs under a voluntary agreement entered into under this part  
502 in excess of ~~[his]~~ the party's liability may seek contribution in an action in district court from  
503 any other party who is or may be liable under Subsection 19-6-302(21) or 19-6-402~~[(26)]~~[(27)]  
504 for the excess costs after providing written notice to any other party that the party bringing the  
505 action has entered into a voluntary agreement and will incur costs.

506 (2) In resolving claims made under Subsection (1), the court shall allocate costs using  
507 the standards in Subsection 19-6-310(2).